Award No. 16499
Docket No. DC-17097

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 495

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 495 on the property of the Seaboard Air Line Railway Company, for and on behalf of Robert Lumzen and all other employes named in correspondence to Carrier dated April 28, 1966 and May 5, 1966, that they be paid eight (8) hours for each day held over at away-from-home terminals in excess of twenty-four (24) hours, April 1, 1966 through April 5, 1966 while in extra service as required by Rule 2, Section F of the Agreement between the parties.

EMPLOYES' STATEMENT OF FACTS: Effective April 1, 1966, this Carrier was faced with a strike in which Claimants and all other employes represented by our Organization on this Carrier were not involved. As is and has been the practice of this and all other Carriers when faced with a strike, all regular assignments are abolished and, as a consequence, employes who were regularly assigned become extra employes. This dispute arises out of a failure by Carrier to pay the Claimants eight (8) hours out of every twenty-four (24) hours they were held at away-from-home terminals as a result of the strike as required by Rule 2, Section F of the Agreement, hereinafter set out in full.

The claim was initiated on the property via letter to Carrier's General Superintendent, Dining Car Department on April 28, 1966 and a letter dated May 5, 1966 to this same official (Employes' Exhibits A and C). Under date of May 5, 1966, the General Superintendent responded to Employes' claim in which he denied, as contended by Employes in our claim, that Claimants were notified that they would be allowed eight hours' pay per day held over at away-from-home terminals, and further denied the assertion by Employes in our claim that such instructions were confirmed on April 3, 1967 by the Claimant's representative with Carrier's Assistant Superintendent, Dining Car Department. Carrier's General Superintendent in this letter did admit, however, that the Dining-Car Stewards and Tavern-Car Attendants submitted time slips including held at away-from-home terminal hours **based on Instructions given by the Dining Car Department** (Employes' Exhibit B). Employes attach hereto exhibits M and N — copies of examples of two (2) of such time slips "based on instructions given by the Dining Car Department," which exhibits show that these instructions included allowing employes who were regularly assigned prior to the strike eight (8) hours out of every twenty four (24) hours held at

The claims for employes not entitled to any payment for layover time as outlined above are declined. If you now desire to discuss same in conference, as referred to in yours of June 23rd, we can meet you for such discussion in Room 606, Seaboard Railroad Building, Richmond, Virginia, at 1:00 P. M., DST, Thursday, August 25th. If not satisfactory, please suggest alternate time and/or date."

The claims were discussed in conference August 25, 1966; however, the General Chairman presented no additional support for the claims that regularly assigned employes were entitled to the held-away-from-home terminal time and nothing to refute the decision of the Director of Personnel.

Rule II(a) of Supplement No. 1 to the Agreement effective December 1, 1943, reads as follows:

"GUARANTEE.

(a) Two Hundred Five (205) hours of service or less in regular assignment shall constitute a basic month's work. Where an employe lays off of his own accord prior to completion of Two Hundred Five (205) hours, due to sickness, leave of absence, suspension, or personal reasons, he will be paid for actual hours earned."

Rule II(f) of Supplement No. 1 to the Agreement effective December 1, 1943, reads as follows:

"HELD AT OTHER THAN HOME TERMINALS.

(f) Employes in extra service or on special trains held at away-from-home terminals in excess of twenty-four (24) hours will be paid eight (8) hours for each twenty-four (24) hour period held. Time under this rule may be combined and made a part of deadheading or service time if within the twenty-four (24) hour period."

It will be noted that Rule II(f) specifically limits the 8-hour payment for being held at other than home terminals to **employes in extra service or on special trains**, and Rule II (a) specifies that 205 hours of service or less in **regular assignment** shall constitute a basic month's work.

OPINION OF BOARD: On April 1, 1966, the Brotherhood of Firemen and Enginemen called a strike which disrupted operations until April 5, 1966. Claim is made on behalf of named employes for compensation while being held over in extra service away from their home terminal in excess of twenty-four hours during the period of April 1 through April 5, 1966. It is petitioner's contention that the regular assignments were abolished and since these employes were in extra service, and held away from home terminals in excess of twenty-four hours, Carrier violated Rule 2 (f) of the Agreement when it failed to pay them eight hours for each 24 hour period held.

Carrier denies violation of the Agreement with the assertion that the regular assignments of these employes were not abolished. It maintains that Rule 2 (f) does not apply in view of the fact that the employes were not in extra service.

The record does not give clear and convincing evidence that the regular assignments were abolished. The allegation that employes were advised by

Carrier's dining car representative that they would be held over until April 5 is not proof that the jobs were abolished. Because of conflicting assertions without supporting proof there is insufficient basis to resolve this dispute, and accordingly, we dismiss the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1968.

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